

LEGISLATIVE HISTORY ONLY

Proposed Floor Statement on Section 717

Mr. President:

In connection with section 717, which is the Federal employee provision of the bill, the Committee has specifically provided a statutory appeal mechanism, including access to the United States District Court, for any Federal employee or applicant who believes he has been discriminated against in this capacity because of race, color, religion, sex, or national origin.

In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or final judgment now reposed in agency heads by, or under, statute for national security reasons. In seeking to insure equal employment opportunities for Federal employees, we do not intend to impair current statutory authority or interfere with determinations made pursuant to that authority by an agency head in the interest of national security.

We do not believe that section 717 modifies any statutes relating to national security, nor that it affects current court decisions upholding any authority granted under those statutes; but it is our opinion that in the absence of affirmative determinations pursuant to national security statutes, the procedures set out in section 717 would apply.

Proposed Amendment to Section 717 of S. 2515

Page 66, line 5, add new subsection (f):

"SEC. 717. (f) Notwithstanding any other provision of this section, this section shall not apply to any personnel action if--

(1) the position involved is subject to any requirement imposed in the interest of the national security of the United States pursuant to any statute of the United States or any Executive order of the President; and

(2) a determination that the requirement is not fulfilled is made by the head of an executive agency as defined in section 105 of Title 5, United States Code, having discretionary authority to terminate the employment of the incumbent of the position whenever he shall determine such termination necessary or advisable in the interest of the United States or the national security."

Proposed Amendment to Section 717 of S. 2515

Page 66, line 5, add new subsection (f):

"SEC. 717. (f) Notwithstanding any other provision of this section, this section shall not apply to any personnel action if--

(1) the position involved is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) a determination that the requirement is not fulfilled is made by the head of an executive agency as defined in section 105 of Title 5, United States Code, having discretionary authority to terminate the employment of the incumbent of the position whenever he shall determine such termination necessary or advisable in the interest of the United States or the national security. "

10 JAN 1972

Approved For Release 2004/03/17 : CIA-RDP73B00296R000400110004-2

Three Amendments in the Alternative
to Section 717 of S. 2515

1. Page 66, line 5, add new subsection (f):

"SEC. 717. (f) Notwithstanding any other provision of this section,
this section shall not apply to any personnel action if--

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imposed in the interest of the national security of the
United States under any security program in effect
pursuant to or administered under any statute of the
United States or any Executive order of the President; and

(2) a determination that the requirement is not fulfilled is
made by the head of an executive agency as defined in section
105 of Title 5, United States Code having discretionary
authority to terminate the employment of the incumbent
of the position whenever he shall determine such termination
necessary or advisable in the interest of the United States."

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to Section 717 of S. 2515

1. Page 66, line 5, add new subsection (f):

"SEC. 717. (f) Notwithstanding any other provision of this section, this section shall not apply to any personnel action if the position involved is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President."

2. Page 66, line 5, add new subsection (f):

"SEC. 717. (f) Notwithstanding any other provision of this section, this section shall not apply to any personnel action if the position involved is subject to any requirement imposed in the interest of the national security of the United States and a determination that the requirement is not fulfilled is made by the head of an executive agency as defined in section 105 of Title 5, United States Code, having discretionary authority to terminate the employment of the incumbent of the position whenever he shall determine such termination necessary or advisable in the interest of the United States or the national security."

3. Page 63, line 3, insert the underscored:

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment... (other than the General Accounting Office or an agency not having any position in the competitive service)...."

4. Page 66, line 5, add new subsection (f):

"SEC. 717. (f) The President, at any time in the public interest, may--

(1) except any agency (other than the Civil Service Commission) from this section, and

(2) withdraw an exception made under this subsection."

S. 2515

EQUAL EMPLOYMENT OPPORTUNITIES
ENFORCEMENT ACT OF 1971

A. Problem

B. Solutions:

1. Legislative History Only
2. Amendment

C. Background Material:

1. Section 717
2. Executive Order 11478
3. Exemption Precedents in Civil Rights Act of 1964

STATEMENT ON SECTION 717 OF S. 2515

Mr. President:

In connection with section 717, which is the Federal employees provision of the bill, the Committee has specifically provided a statutory appeal mechanism for any Federal employee or applicant who believes he has been discriminated against in this capacity because of race, color, religion, sex or national origin, including access to the United States District Court.

In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or finality of judgment now reposed in agency heads by, or under, statute for national security reason. In seeking to insure equal employment opportunities for Federal employees, we do not intend to impair current statutory authority or interfere with judgments made pursuant to that authority by an agency head in the interest of national security.

We do not believe that section 717 modifies such national security statutes, nor does it affect current court decisions upholding this authority granted thereunder as determined in the court; but we do believe that in the absence of affirmative judgments made in the interest of national security under such statutes, the authority of section 717 would prevail.

The Senate version of the Federal employee provision (S. 2515, new section 717) applies to CIA and raises at least the following problems:

(1) The enforcement authority of the Civil Service Commission and the remedies available to the aggrieved through court action could conflict with the Director's authority to terminate employment under section 102(c) of the National Security Act of 1947. To the extent the newer authorities prevailed there would be a dilution of the Director's 102(c) authority.

(2) Proceedings on complaints before either the Civil Service Commission on appeal or the district courts may necessarily involve the disclosure of information on Agency "organization, functions, names, official titles, salaries, or numbers of personnel employed" in conflict with section 6 of the CIA Act of 1949 and the Director's responsibility to protect intelligence sources and methods.

(3) The remedies available to aggrieved employees or applicants could be used to harass the Agency and its functioning, with ramifications similar in substance, if not in scope, to those we have associated with the so-called Ervin bill on constitutional rights of Federal employees.

(4) There may be a legitimate operational need that the assignment of personnel by the Agency not be free from discrimination based on race, color, religion, sex or national origin.

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